

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION**

WILLIAM D. FOWLER,

Plaintiff,

v.

KENNETH W. STOLLE,

Defendant.

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Civil Action No. 2:22cv504

**FINAL PRETRIAL ORDER**

In accordance with the Court’s Federal Rule of Civil Procedure Rule 16(b) Order and the local rules of Court for the United States District Court for the Eastern District of Virginia relating to pretrial procedure, it is **ORDERED** that:

**I. STIPULATED FACTS.**

The parties hereto agree and stipulate to:

1. The Plaintiff is William D. Fowler, a former Deputy Sheriff of the Virginia Beach Sheriff’s office.
2. The Defendant is Kenneth W. Stolle.
3. Sheriff Stolle ran as the Republican candidate and was first elected Sheriff of the City of Virginia Beach in November 2009. He was reelected in 2013, 2017 and 2021.
4. Plaintiff is married to Kelly Convirs-Fowler.
5. The Sheriff was aware that Plaintiff was married to Mrs. Fowler. Plaintiff was hired as a Deputy Sheriff in the Virginia Beach Sheriff’s Office (“VBSO”) by former Sheriff Paul Lanteigne in 2007.

6. Plaintiff was employed at the VBSO from March 1, 2007 to December 31, 2021.

7. Sheriff Stolle reappointed plaintiff when he took office in 2010, and reappointed plaintiff following his reelection in 2013 and 2017.

8. Plaintiff was promoted to Corporal in 2010.

9. In January of 2015, Plaintiff was promoted from Corporal to Sergeant and assigned to Corrections. He was transferred to the Intake/Release Dept. in February 2016.

10. On November 30, 2021, Sheriff Stolle verbally advised plaintiff that he would not be reappointed for the Sheriff's term starting in January 2022.

11. Plaintiff supervised five deputies as an Intake/Release Sergeant.

12. In January of 2010, Sheriff Stolle entered into a Memorandum of Understanding ("MOU") with the Virginia Beach Police Dept. ("VBPD"), on behalf of the City of Virginia Beach, whereby the VBPD utilizes VBSO deputies to assist with staffing, management and operation of the VBPD Second Police Precinct's Temporary Detention Facility. This MOU remained in place during Plaintiff's tenure.

## **II. LEGAL AND EVIDENTIARY STIPULATIONS**

1. Jurisdiction and Venue are proper.

## **III. WITNESSES.**

Neither party objects to the following witnesses:

1. Sgt. William David Fowler
2. Sheriff Kenneth Stolle
3. Del. Kelly Convirs-Fowler
4. Undersheriff Brian Struzzieri

5. Chief Deputy Victoria Thomson
6. Chief Deputy Rocky Holcomb
7. Capt. Alvie Culanding
8. Lt. Melissa Fleet
9. Melissa Keough
10. Capt. Kevin Hugo
11. HR Director Sherry White
12. Lt. Nicholas Curtis
13. Alicia Driscoll
14. HR Director Allison Brumley

A. The Plaintiff expects to present the following witnesses at trial (\* denotes “may call”):

|    | <b>Name</b>               | <b>Address</b>  | <b>Purpose</b> | <b>Objection</b> |
|----|---------------------------|---|----------------|------------------|
| 1. | Sgt. William David Fowler | c/o William R. Thetford, Jr.,<br>Esq.<br>Simms Showers LLP<br>305 Harrison St SE<br>3 <sup>rd</sup> Floor<br>Leesburg, VA 20175 |                |                  |
| 2. | Del. Kelly Convirs-Fowler | c/o William R. Thetford, Jr.,<br>Esq.<br>Simms Showers LLP<br>305 Harrison St SE<br>3 <sup>rd</sup> Floor<br>Leesburg, VA 20175 |                |                  |

|     |                                |  |  |  |
|-----|--------------------------------|--|--|--|
| 3.  | Sheriff Kenneth Stolle         | c/o Jeff W. Rosen, Esq.<br>Pender & Coward, PC<br>222 Central Park Avenue<br>Suite 400<br>Virginia Beach, VA 23462 |  |  |
| 4.  | Undersheriff Brian Struzzieri* | c/o Jeff W. Rosen, Esq.<br>Pender & Coward, PC<br>222 Central Park Avenue<br>Suite 400<br>Virginia Beach, VA 23462 |  |  |
| 5.  | Chief Deputy Rocky Holcomb*    | c/o Jeff W. Rosen, Esq.<br>Pender & Coward, PC<br>222 Central Park Avenue<br>Suite 400<br>Virginia Beach, VA 23462 |  |  |
| 6.  | Chief Deputy Victoria Thomson* | c/o Jeff W. Rosen, Esq.<br>Pender & Coward, PC<br>222 Central Park Avenue<br>Suite 400<br>Virginia Beach, VA 23462 |  |  |
| 7.  | Lt. Melissa Fleet*             | c/o Jeff W. Rosen, Esq.<br>Pender & Coward, PC<br>222 Central Park Avenue<br>Suite 400<br>Virginia Beach, VA 23462 |  |  |
| 8.  | Capt. Alvie Culanding*         | c/o Jeff W. Rosen, Esq.<br>Pender & Coward, PC<br>222 Central Park Avenue<br>Suite 400<br>Virginia Beach, VA 23462 |  |  |
| 9.  | Capt. Kevin Hugo*              | c/o Jeff W. Rosen, Esq.<br>Pender & Coward, PC<br>222 Central Park Avenue<br>Suite 400<br>Virginia Beach, VA 23462 |  |  |
| 10. | HR Director Sherry White*      | c/o Jeff W. Rosen, Esq.<br>Pender & Coward, PC<br>222 Central Park Avenue<br>Suite 400<br>Virginia Beach, VA 23462 |  |  |

|     |                                 |   |  |  |
|-----|---------------------------------|---|--|--|
| 11. | HR Director<br>Allison Brumley* | c/o Jeff W. Rosen, Esq.<br>Pender & Coward, PC<br>222 Central Park Avenue<br>Suite 400<br>Virginia Beach, VA 23462              |  |  |
| 12. | Rachel Foster *                 | 4504 Marlwood Way<br>Virginia Beach, VA 23462<br>757-362-4643   |  |  |
| 13. | Lt. Nicholas<br>Curtis*         | c/o Jeff W. Rosen, Esq.<br>Pender & Coward, PC<br>222 Central Park Avenue<br>Suite 400<br>Virginia Beach, VA 23462              |  |  |
| 14. | Deputy Brian<br>Capps *         | c/o William R. Thetford, Jr.,<br>Esq.<br>Simms Showers LLP<br>305 Harrison St SE<br>3 <sup>rd</sup> Floor<br>Leesburg, VA 20175 |  | Objection. Not<br>properly<br>identified in<br>discovery |
| 15. | Capt. Henri “Rick”<br>Norris    | c/o William R. Thetford, Jr.,<br>Esq.<br>Simms Showers LLP<br>305 Harrison St SE<br>3 <sup>rd</sup> Floor<br>Leesburg, VA 20175 |  | Objection. Not<br>properly<br>identified in<br>discovery |
| 16. | Sgt. Joseph Franze<br>(ret) *   | c/o William R. Thetford, Jr.,<br>Esq.<br>Simms Showers LLP<br>305 Harrison St SE<br>3 <sup>rd</sup> Floor<br>Leesburg, VA 20175 |  | Objection. Not<br>properly<br>identified in<br>discovery |

The Plaintiff reserves the right to call any witnesses previously identified by the Defendant.

B. The Defendant expects to present the following witnesses at trial (\* denotes “may call”):

|    | Name                   | Address  | Purpose | Objection |
|----|------------------------|--|---------|-----------|
| 1. | Sheriff Kenneth Stolle | c/o Jeff W. Rosen, Esq.<br>Pender & Coward, PC<br>222 Central Park Avenue<br>Suite 400<br>Virginia Beach, VA 23462 |         |           |
| 2. | William D. Fowler      | c/o William R. Thetford,<br>Esq.   |         |           |
| 3. | Brian Struzzieri       | c/o Jeff W. Rosen, Esq.<br>Pender & Coward, PC<br>222 Central Park Avenue<br>Suite 400<br>Virginia Beach, VA 23462 |         |           |
| 4. | Victoria Thomson       | c/o Jeff W. Rosen, Esq.<br>Pender & Coward, PC<br>222 Central Park Avenue<br>Suite 400<br>Virginia Beach, VA 23462 |         |           |
| 5. | Alvie Culanding        | c/o Jeff W. Rosen, Esq.<br>Pender & Coward, PC<br>222 Central Park Avenue<br>Suite 400<br>Virginia Beach, VA 23462 |         |           |
| 6. | Melissa Keough         | c/o Jeff W. Rosen, Esq.<br>Pender & Coward, PC<br>222 Central Park Avenue<br>Suite 400<br>Virginia Beach, VA 23462 |         |           |
| 7. | Kevin Hugo             | c/o Jeff W. Rosen, Esq.<br>Pender & Coward, PC<br>222 Central Park Avenue<br>Suite 400<br>Virginia Beach, VA 23462 |         |           |
| 8. | Rocky Holcomb *        | c/o Jeff W. Rosen, Esq.<br>Pender & Coward, PC<br>222 Central Park Avenue<br>Suite 400<br>Virginia Beach, VA 23462 |         |           |

|     |  |   |  |  |
|-----|--|---|--|--|
| 9.  | Nicholas Curtis *                        | c/o Jeff W. Rosen, Esq.<br>Pender & Coward, PC<br>222 Central Park Avenue<br>Suite 400<br>Virginia Beach, VA 23462              |  |  |
| 10. | Alicia Driscoll *                        | c/o Jeff W. Rosen, Esq.<br>Pender & Coward, PC<br>222 Central Park Avenue<br>Suite 400<br>Virginia Beach, VA 23462              |  |  |
| 11. | Sherry White *                           | c/o Jeff W. Rosen, Esq.<br>Pender & Coward, PC<br>222 Central Park Avenue<br>Suite 400<br>Virginia Beach, VA 23462              |  |  |
| 12. | Kelly Convirs-Fowler *                   | c/o William R. Thetford,<br>Jr., Esq.<br>Simms Showers LLP<br>305 Harrison St SE<br>3 <sup>rd</sup> Floor<br>Leesburg, VA 20175 |  |  |
| 13. | Marjorie Smith, City<br>Attorney *       | Virginia Beach City<br>Attorney's Office<br>2401 Courthouse Drive<br>Bldg 1, Room 260<br>Virginia Beach, VA 23456               |  |  |
| 14. | Shauna Buckley, *<br>Recruitment Manager | Norfolk Sheriff's Office<br>140 East Street<br>Norfolk, VA 23510  |  |  |
| 15. | Sheriff Joe Baron *                      | Norfolk Sheriff's Office<br>140 East Street<br>Norfolk, VA 23510  |  |  |
| 16. | Allison Boyd, *<br>Executive Assistant   | Norfolk Sheriff's Office<br>140 East Street<br>Norfolk, VA 23510  |  |  |
| 17. | Kimberly Bean, *<br>HR Specialist        | Norfolk Sheriff's Office<br>140 East Street<br>Norfolk, VA 23510  |  |  |

The Defendant reserves the right to call any witnesses previously identified by the Plaintiff.

**IV. EXHIBITS**

A. **Agreed Exhibits.** The parties hereto agree that the following exhibits may be introduced in evidence, by either party, without the necessity of further proof:

| <b>Exhibit Number</b> | <b>Identification</b>             | <b>Description</b>                                 |
|-----------------------|-----------------------------------|--|
| 1.                    | Stolle RFP 0412                   | 12/28/21 Letter re: Non-Reappointment              |
| 2.                    | P 00105<br>Attachment B Recording | Audio from Non-Reappointment Meeting               |
| 3.                    | Stolle RFP 321-0324               | Request for Transfer Email and attachment 01-10-19 |
| 4.                    | Kelly Fowler SDT 010-013          | Text messages between Stolle and Convirs-Fowler    |
| 5.                    | Stolle RFP 0409-0412              | Separation Notice                                  |
| 6.                    | Stolle RFP 0465-0482              | VB SO Policy and Procedure General Order           |

B. **Plaintiffs' Exhibits:** The Plaintiff wishes to offer the following exhibits to which the Defendant objects:<sup>1</sup>

| <b>Exhibit Number</b> | <b>Bates Stamp Number</b> | <b>Exhibit</b>              | <b>Objection</b>   |
|-----------------------|---------------------------|-----------------------------|--|
| 1.                    |                           | Defendant Stolle Deposition | Objection – Hearsay (FRE 801); Not Proper Exhibit for Trial. |
| 2.                    |                           | Recording of Termination    | Objection – Hearsay (FRE 801).                               |
| 3.                    | Stolle RFP 221-383        | Employment Evaluations      | No objection if proper foundation at trial.                  |

<sup>1</sup> In addition to objections stated, and even if no objection is stated, the parties object to any identified exhibit not properly authenticated or otherwise lacking in foundation and reserve the right to challenge proffered authenticating witnesses and foundations at trial. The parties also reserve the right to introduce exhibits and present witnesses identified by the other party. The parties reserve the right to present appropriate demonstrative exhibits.



| <b>Exhibit Number</b> | <b>Bates Stamp Number</b> | <b>Exhibit</b>   | <b>Objection</b>   |
|-----------------------|---------------------------|--|--|
| 4.                    |                           | Recording of Stolle Warning Plaintiff Not to Run for Office 3-30-18            | Objection – Hearsay (FRE 801); Irrelevant (FRE 401, 402); Prejudice outweighs any probative value (FRE 403).   |
| 5.                    | Stolle RFP 0383-0397      | Fowler Transfer Requests   | Objection – Hearsay (FRE 801); Irrelevant (FRE 401, 402).  |
| 6.                    |                           | Plaintiff Social Media Posts in Support of Del. Fowler and Political Positions | Objection – Hearsay (FRE 801); Irrelevant (FRE 401, 402); Prejudice outweighs any probative value (FRE 403); See Motion <i>in Limine</i> (Doc. 56, 57) |
| 7.                    | Stolle RFP 321-324        | Request for transfer to the Professional Standards Division                    | Objection – Hearsay (FRE 801); Irrelevant (FRE 401, 402)   |
| 8.                    | Stolle RFP 0413-0422      | William Fowler Training Records  | No objection if proper foundation at trial   |
| 9.                    |                           | PBA Endorsement of Delegate Convirs-Fowler                                     | Objection – Hearsay (FRE 801); Irrelevant (FRE 401, 402); Prejudice outweighs any probative value (FRE 403); Authenticity (FRE 1002)                   |

| <b>Exhibit Number</b> | <b>Bates Stamp Number</b> | <b>Exhibit</b>                                 | <b>Objection</b>   |
|-----------------------|---------------------------|--|--|
| 10.                   |                           | Stolle Endorsements of Del. Fowler Opponents   | Objection – Hearsay (FRE 801); Irrelevant (FRE 401, 402); Prejudice outweighs any probative value (FRE 403); Lack of Foundation; Authenticity (FRE 1002) |
| 11.                   |                           | VBSO Policy and Procedure General Order        | No objection if proper foundation at trial.  |
| 12.                   |                           | Delegate Fowler 2019 Advertisement Stills      | No objection if proper foundation at trial   |
| 13.                   | Kelly Fowler SDT 028      | Del. Fowler 2019 Advertisement Video           | Objection – Hearsay (FRE 801); Irrelevant (FRE 401, 402); Prejudice outweighs any probative value (FRE 403)  |
| 14.                   | Stolle RFP 0655-0673      | Fowler Request re Panel and uniform in Ad 2021 | No objection if proper foundation at trial   |
| 15.                   | Stolle RFP 0691           | Del. Fowler 2021 Advertisement Video           | Objection – Hearsay (FRE 801); Irrelevant (FRE 401, 402); Prejudice outweighs any probative value (FRE 403)  |
| 16.                   | Stolle RFP 0688-0689      | Del. Fowler 2021 Advertisement Stills          | No objection if proper foundation at trial   |

| Exhibit Number | Bates Stamp Number       | Exhibit  | Objection   |
|----------------|--------------------------|--|---|
| 17.            |                          | Sheriff's Office Endorsement Ads                         | Objection – Hearsay (FRE 801); Irrelevant (FRE 401, 402); Prejudice outweighs any probative value (FRE 403); Lack of Foundation; Authenticity (FRE 1002); See Motion <i>in Limine</i> (Doc. 59, 60) |
| 18.            | Kelly Fowler SDT 010-012 | Delegate Fowler and Stolle Texts                         | Objection – Irrelevant (FRE 401, 402); Prejudice outweighs any probative value (FRE 403)  |
| 19.            |                          | Sheriff Stolle Separation Notice                         | No objection  |
| 20.            |                          | Sheriff Stolle Social Media Posts re Fowler's Employment | Objection – Hearsay (FRE 801); Irrelevant (FRE 401, 402); Lack of Foundation; Prejudice outweighs any probative value (FRE 403); See Motion <i>in Limine</i> (Doc. 56, 57)                          |
| 21.            |                          | Sheriff Stolle Facebook Post in Response to Civil Suit   | Objection – Hearsay (FRE 801); Irrelevant (FRE 401, 402); Lack of Foundation; Prejudice outweighs any probative value (FRE 403); See Motion <i>in Limine</i> (Doc. 56, 57)                          |
| 22.            |                          | Virginian Pilot: "Virginia Beach Sheriff Faces Lawsuit"  | Objection – Hearsay (FRE 801); Irrelevant (FRE 401, 402); Prejudice outweighs any probative value (FRE 403); See Motion <i>in Limine</i> (Doc. 56, 57)  |

| Exhibit Number | Bates Stamp Number | Exhibit   | Objection  |
|----------------|--------------------|---|--|
| 23.            |                    | Virginia Public Access Project – Donations by party | Objection – Hearsay (FRE 801); Irrelevant (FRE 401, 402); Prejudice outweighs any probative value (FRE 403); Authenticity (FRE 1002)   |
| 24.            |                    | William Fowler W2 2020 Redacted                     | Objection – Hearsay (FRE 801); See Motion <i>in Limine</i> (Doc. 62, 63)   |
| 25.            |                    | William Fowler W2 2021 Redacted                     | Objection – Hearsay (FRE 801); See Motion <i>in Limine</i> (Doc. 62, 63)   |
| 26.            |                    | Fowler Retirement Estimate – Before Termination     | Objection – Hearsay (FRE 801)); Prejudice outweighs any probative value (FRE 403); Authenticity (FRE 1002); Lack of Foundation; Requires Expert Testimony; See Motion <i>in Limine</i> (Doc. 62, 63) |
| 27.            |                    | Fowler Retirement Estimate – Post Termination       | Objection – Hearsay (FRE 801)); Prejudice outweighs any probative value (FRE 403); Authenticity (FRE 1002); Lack of Foundation; Requires Expert Testimony; See Motion <i>in Limine</i> (Doc. 62, 63) |

| <b>Exhibit Number</b> | <b>Bates Stamp Number</b> | <b>Exhibit</b>   | <b>Objection</b>   |
|-----------------------|---------------------------|--|--|
| 28.                   |                           | Fowler retirement Estimate – Before Termination – Early Retire                   | Objection – Hearsay (FRE 801)); Prejudice outweighs any probative value (FRE 403); Authenticity (FRE 1002); Lack of Foundation; Requires Expert Testimony; See Motion <i>in Limine</i> (Doc. 62, 63) |
| 29.                   | Kelly Fowler SDT 001-009  | Correspondence between Del. Fowler and VBSO                                      | Objection – Hearsay (FRE 801); Irrelevant (FRE 401, 402); Prejudice outweighs any probative value (FRE 403)  |
| 30.                   | Stolle RFP 0273-0281      | Positive Performance Commendations from Personnel Files                          | No objection if proper foundation at trial   |
| 31.                   | Fowler 0695-0697          | Paid Time Off Balance Readjustments  | Objection – Hearsay (FRE 801); Lack of Foundation; Requires Expert Testimony; See Motion <i>in Limine</i> (Doc. 62, 63)  |
| 32.                   | Stolle RFP 0591-0642      | Investigation into Hostile Note Left on Plaintiff's Vehicle                      | Objection – Hearsay (FRE 801); Irrelevant (FRE 401, 402); Prejudice outweighs any probative value (FRE 403)  |
| 33.                   | Stolle RFP 0072           | Statement Why Fowler Wanted to work for VBSO                                     | Objection – Hearsay (FRE 801); Irrelevant (FRE 401, 402); Prejudice outweighs any probative value (FRE 403)  |
| 34.                   |                           | Stolle Response to Plaintiff's Second Interrogatories and Request for Production | Objection – Hearsay (FRE 801); Not Proper Exhibit for Trial  |

| Exhibit Number | Bates Stamp Number   | Exhibit   | Objection  |
|----------------|----------------------|---|--|
| 35.            |                      | Stolle Supplemental Response to Plaintiff's Second Interrogatories and Request for Production | Objection – Hearsay (FRE 801); Not Proper Exhibit for Trial  |
| 36.            | Stolle RFP 0685-0686 | Correspondence regarding Out of State Protective Orders                                       | Objection – Hearsay (FRE 801); Irrelevant (FRE 401, 402); Prejudice outweighs any probative value (FRE 403)  |
| 37.            |                      | Virginia Beach Sheriff Removed From State Mass Shooting Investigation                         | Objection – Hearsay (FRE 801); Irrelevant (FRE 401, 402); Prejudice outweighs any probative value (FRE 403); See Motion <i>in Limine</i> (Doc. 56, 57) |
| 38.            |                      | Picture of Plaintiff and Defendant when Plaintiff Promoted to Sergeant                        | No objection if proper foundation at trial   |

The Plaintiff may use demonstrative exhibits.

C. **Defendant's Exhibits.** The Defendant wishes to offer the following exhibits to which the Plaintiff objects<sup>2</sup>:

| Exhibit Number         | Bates Stamp Number             | Exhibit  | Objection  |
|------------------------|--------------------------------|--|--|
| 1.                     | Stolle RFP 0016-0020           | Job Description – Intake/Release Sergeant                      | Relevance, Confuses the issues, foundation   |
| 2.                     | Stolle RFP 0412                | 12/28/21   | None   |
| 3.                     | P 00105 Attachment B Recording | Audio from Non-Reappointment                                   | None   |
| 4.                     | Stolle RFP 0001                | Organizational Chart   | Relevance  |
| 5.                     | Stolle RFP 0021-0037           | VBSO Policy No. 02-03-00: Rules/Regulations and Discipline     | Relevance  |
| 6.<br><b>WITHDRAWN</b> | Kelly Fowler SDT 028           | Video from Kelly Fowler Advertisement 2019<br><br>Gun Violence | Relevance  |
| 7.                     | Kelly Fowler Depo Exhibit 3B   | Photograph from Kelly Fowler 2019 Advertisement (In Uniform)   | Relevance  |
| 8.                     | Stolle RFP 0459-0484           | Professional Standards Review October 2019                     | Hearsay;<br>No personal knowledge;<br>Relevance (portions of the exhibit describing unrelated disciplinary procedures);<br>Red. R. Evid. 403 |

<sup>2</sup> In addition to objections stated, and even if no objection is stated, the parties object to any identified exhibit not properly authenticated or otherwise lacking in foundation and reserve the right to challenge proffered authenticating witnesses and foundations at trial. The parties also reserve the right to introduce exhibits and present witnesses identified by the other party. The parties reserve the right to present appropriate demonstrative exhibits.

| <b>Exhibit Number</b>  | <b>Bates Stamp Number</b> | <b>Exhibit</b>   | <b>Objection</b>  |
|------------------------|---------------------------|--|---|
| 9.<br><b>WITHDRAWN</b> | Stolle RFP 0691           | Video from Kelly Fowler Advertisement 10/01/21 "Military Families" | Relevance, misleads the jury                                      |
| 10.                    | Fowler Depo Ex. 1         | Screenshots from Kelly Fowler Advertisement 10/01/21               | Best evidence, Relevancy, Cumulative                              |
| 11.                    | Stolle RFP 0668           | Email 09-01-2021   | Completeness  |
| 12.                    | Stolle RFP 0655           | Email 09-08-2021   | Completeness  |
| 13.                    | Stolle RFP 670            | Memorandum re: Speaker Panel and Uniform Request 09-07-21          | Hearsay, Relevance<br>Fed. R. Evid 403                            |
| 14.                    | Stolle RFP 0646           | Memorandum 01-12-21  | Hearsay<br>Relevance<br>No Personal Knowledge<br>Fed. R. Evid 403 |
| 15.                    | Stolle RFP 0516-0532      | Professional Standards Review December 2012                        | Fed. R. Evid 403, Relevance<br>Hearsay                            |
| 16.                    | Stolle RFP 0679           | Email 11-21-19   | Hearsay, No personal knowledge,<br>Fed. R. Evid 403               |
| 17.                    | Stolle RFP 0579-0590      | Professional Standards Review December 2019                        | Hearsay,<br>Fed. R. Evid 403                                      |
| 18.                    | Stolle RFP 0591-0642      | Professional Standards Review January 2020                         | Hearsay, Relevance,<br>No personal knowledge,<br>Fed. R. Evid 403 |
| 19.                    | Stolle RFP 0680           | Email 11-05-20   | Hearsay, No personal knowledge,<br>Relevance,<br>Fed. R. Evid 403 |



| <b>Exhibit Number</b> | <b>Bates Stamp Number</b> | <b>Exhibit</b>                                     | <b>Objection</b>  |
|-----------------------|---------------------------|--|---|
| 20.                   | Stolle RFP 0681-0686      | Email chain 12-04-20                               | Ms. Thomson's email at the top of the chain is objected to on the bases of Hearsay, Relevance, Fed. R. Evid 403 |
| 21.                   | Stolle RFP 0445-0458      | Arrests  | Relevance, Confuses the issues  |
| 22.                   | Stolle RFP 321-0324       | Request for Transfer Email and attachment 01-10-19 | None  |
| 23.                   | Stolle RFP 0692-0697      | Memorandum Agreement between VBSO and VBPD         | Relevance   |
| 24.                   | Stolle RFP 0698           | Request to work extra duty                         | Relevance   |

The Defendant may use demonstrative exhibits.

| <b>Exhibit Number</b>   | <b>Bates Stamp Number</b>                | <b>Exhibit</b>   | <b>Objection</b>                    |
|-------------------------|--|--|-------------------------------------|
| 25.                     | NSO SDT 010-012                          | Norfolk Sheriff Documents- (i.e. incomplete Application) | Relevance, Fed. R. Evid 493 Hearsay |
| 26.                     | Fortis Title SDT 0116                    | Settlement Statement                                     | Relevance Hearsay Fed. R. Evid 403  |
| 27.<br><b>Withdrawn</b> | P 000106<br><br>Attachment C - Recording | 2018 Audio Recording                                     | None                                |
| 28.                     | Kelly Fowler SDT 010-013                 | Text messages between Stolle and Convirs-Fowler          | None                                |

**IV. FACTUAL CONTENTIONS.**

A. The factual contentions of the Plaintiff are:

1. Plaintiff hereby incorporates by reference all facts set forth in his Memorandum of Law in Support of Motion for Summary Judgment but specifically highlights the following for reference:

2. Plaintiff was a good employee achieving positive evaluations throughout his employment.

3. Despite his success, Plaintiff fell out of favor with the Sheriff because the Sheriff was politically opposed to Plaintiff and Plaintiff's wife's political stances and standing.

4. The Defendant, directly and through his command staff, discriminated against Plaintiff for his Speech and Association.

5. Sheriff Stolle told Plaintiff that Plaintiff could not remain employed by the VBSO if he won a seat on the City Council because to remain would be a clear conflict of interest.

6. Sheriff Stolle then permitted a Republican member of his staff to serve on the City Council despite the existence of the same factual circumstances that the Sheriff indicated would result in the Plaintiff having to resign from the VBSO.

7. Sheriff Stolle's stated reasons for ending Plaintiff's appointment changed multiple times between the actual notification that he would not re-appoint Plaintiff, in the press, and in litigation.

8. The reasons stated by Sheriff Stolle are pretexts for Speech or Association as motivating factors.

B. The factual contentions of the Defendant are:

1. Defendant hereby incorporates by reference all facts set forth in his Memorandum of Law in Support of Motion for Summary Judgment.

**V. TRIALE ISSUES.**

A. The triable issues as contended by the Plaintiff are:

1. Whether Plaintiff's political association was a motivating factor in the Sheriff's decision to terminate Plaintiff's appointment, in violation Plaintiff's Federal or Virginia Constitutional Protections.

2. Whether Plaintiff's association with his wife was a motivating factor in the Sheriff's decision to terminate Plaintiff's appointment, in violation Plaintiff's Federal or Virginia Constitutional Protections.

3. Whether Plaintiff's political speech was a motivating factor in the Sheriff's decision to terminate Plaintiff's appointment, in violation Plaintiff's Federal or Virginia Constitutional Protections..

4. Whether the Defendant's stated reasons for terminating Plaintiff's appointment were contradictory, and if so, were the Sheriff's stated motivating factors pretextual.

B. The triable issues as contended by the Defendant are:

1. Whether Sheriff Stolle is entitled to qualified immunity because the law was not clearly established that his failure to reappoint plaintiff violated the First Amendment?

2. Whether Sheriff Stolle violated Plaintiff's federal or state constitutional right of free speech when he did not reappoint the Plaintiff as a deputy sheriff?

3. Whether Sheriff Stolle violated Plaintiff's federal or state constitutional right of association when he did not reappoint the Plaintiff as a deputy sheriff?

**ENTERED** this \_\_\_\_\_ day of September, 2023.

\_\_\_\_\_  
United States Magistrate Judge

We ask for this:

\_\_\_\_\_  
/s/  
H. Robert Showers, Esq.  
William R. Thetford, Jr., Esq.  
Jonathan E. Monroe, Esq.  
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